

ESTTA Tracking number: **ESTTA22314**

Filing date: **12/29/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### **Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

#### **Opposer Information**

<b>Name</b>	Levi Strauss & Co.
<b>Granted to Date of previous extension</b>	01/01/2005
<b>Address</b>	Levi's Plaza, 1155 Battery St. San Francisco, CA 94111 UNITED STATES

<b>Attorney information</b>	Gia L. Cincone Townsend & Townsend & Crew Two Embarcadero Center, Eighth Floor San Francisco, CA 94111 UNITED STATES glcincone@townsend.com Phone:415-576-0200
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#### **Applicant Information**

<b>Application No</b>	78357476	<b>Publication date</b>	11/02/2004
<b>Opposition Filing Date</b>	12/29/2004	<b>Opposition Period Ends</b>	01/01/2005
<b>Applicant</b>	indigoGROUP U S A 223 W. Rosecrans Ave. Gardena, CA 90248		

	UNITED STATES
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**Goods/Services Affected by Opposition**

Class 025. All goods and services in the class are opposed, namely: Clothing, namely, jeans, pants, shorts, skirts, jackets
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<b>Attachments</b>	indigoGROUP Notice of Opposition.pdf ( 5 pages )
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<b>Signature</b>	/Gia L. Cincone/
<b>Name</b>	Gia L. Cincone
<b>Date</b>	12/29/2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re application of:

indigoGROUP U S A

For: DESIGN ONLY

Serial No.: 78/357,476

Filed: January 26, 2004

Published: November 2, 2004

NOTICE OF OPPOSITION

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Sir or Madam:

LEVI STRAUSS & CO. ("Opposer") believes it will be damaged by the registration of the DESIGN ONLY mark illustrated in and covered by Application Serial No. 78/357,476, filed on January 26, 2004, by indigoGROUP U S A ("Applicant"), and hereby opposes such trademark.

Opposer is a Delaware corporation having its headquarters and its principal place of business at 1155 Battery Street, San Francisco, California 94111. Applicant is, upon information and belief, a California corporation with an address at 223 West Rosecrans Avenue, Gardena, California 90248. This Notice of Opposition has been timely filed. As grounds of opposition, Opposer alleges as follows:

1. As illustrated in the Official Gazette dated November 2, 2004, Applicant seeks to register the Design Only mark illustrated in and covered by Application Serial No. 78/357,476 in International Class 25.

2. Opposer is the owner of a distinctive Arcuate Stitching Trademark (hereinafter the "Arcuate Trademark"), as reflected in the representative registrations issued on the Principal Register, both of which presently are in full force and effect, and both of which are incontestable under 15 U.S.C. § 1065, as shown by the records of the United States Patent and Trademark Office.

<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>
Design Only	1,139,254	September 2, 1980
Design Only	404,248	November 16, 1943

Since at least as early as 1873, Opposer continuously has used its Arcuate Trademark on a variety of goods, including but not limited to jeans, pants, jackets, skirts, dresses and shorts.

3. No issue of priority exists with respect to Opposer's Trademark as set out in the above-referenced registrations and the Design Only mark illustrated in and covered by Application Serial No. 78/357,476. Opposer's dates of adoption and first use of its Arcuate Trademark long precede the date of Applicant's intent to use application for this Design Only mark and its date of first use, if any.

4. Since adoption and first use of Opposer's Arcuate Trademark, Opposer continuously has marketed and presently is marketing its goods nationwide. Opposer's goods are identified as originating from Opposer through the display of Opposer's Arcuate Trademark.

5. Since adoption and first use of Opposer's Arcuate Trademark, Opposer has expended and continues to expend substantial time, money, and effort in promoting its Arcuate

Trademark to identify Opposer as the source of the goods displaying that trademark. As a result, Opposer believes and alleges that the public has come to recognize Opposer as the source of a variety of goods, including but not limited to jeans, pants, jackets, skirts, dresses and shorts, that display Opposer's Arcuate Trademark.

6. By virtue of its efforts and expenditure of considerable sums for promotional activities and by virtue of the excellence of its goods, Opposer has gained a valuable reputation for its Arcuate Trademark and has developed exceedingly valuable goodwill with respect to that trademark.

7. Registration of the Design Only mark illustrated in and covered by Application Serial No. 78/357,476 will lead the public to conclude, incorrectly, that Applicant is or has been, and that Applicant's goods displaying said trademark are or have been, authorized, sponsored, or licensed by Opposer. Accordingly, issuance of any registration to Applicant for the Design Only mark at issue is contrary to the provisions of 15 U.S.C. § 1052(a) and will result in damage to Opposer and the public.

8. The Design Only mark illustrated in and covered by Application Serial No. 78/357,476 is deceptively similar to Opposer's Arcuate Trademark so as to cause confusion, or to cause mistake or to deceive the public as to the origin of Applicant's goods bearing that trademark. Therefore, registration of said trademark is prohibited by 15 U.S.C. § 1052(d).

9. The Design Only mark illustrated in and covered by Application Serial No. 78/357,476 creates the same, or essentially the same, commercial impression as Opposer's Arcuate Trademark. Accordingly, registration by Applicant of that trademark is likely to cause confusion, or to cause mistake or to deceive the public as to the source of Applicant's goods, all

to the harm and damage of Opposer and the public. Therefore, registration of said trademark is prohibited by 15 U.S.C. § 1052(d).

10. Opposer's Arcuate Trademark is distinctive and famous within the meaning of 15 U.S.C. § 1125(c), the Federal Trademark Dilution Act of 1995. The Design Only mark illustrated in and covered by Application Serial No. 78/357,476 will, when used, cause dilution of the distinctive quality of Opposer's Arcuate Trademark, in violation of the Federal Trademark Dilution Act of 1995, 15 U.S.C. § 1125(c), all to the harm and damage of Opposer and the public. Therefore, registration of said trademark may be refused under 15 U.S.C. §§ 1052 and 1063(a) (as amended by the Trademark Amendments Act of 1999).

11. Registration of the Design Only mark illustrated in and covered by Application Serial No. 78/357,476 would constitute prima facie evidence of the validity of such registration, of Applicant's ownership of that trademark, and of Applicant's exclusive right to use said trademark pursuant to the provisions of 15 U.S.C. § 1057(b). Such registration would be a source of damage and injury to Opposer and the public and would be contrary to the principles of registration set out in 15 U.S.C. §§ 1051 et seq.

12. Registration of the Design Only mark illustrated in and covered by Application Serial No. 78/357,476 would be incorrect and improper in view of the requirements of the Trademark Act of 1946, as amended, including specifically but not limited to the provisions of 15 U.S.C. §§ 1051, 1052, 1063, and 1127 thereof.

WHEREFORE, Opposer prays that this Opposition be sustained, and that registration to Applicant for the Design Only mark illustrated in and covered by Application Serial No. 78/357,476 in International Class No. 25 be denied.

Please charge any necessary fee regarding this Opposition to the Deposit Account of Townsend and Townsend and Crew LLP, No. 20-1430, and credit any overpayment to such deposit account.

Please direct all notices, pleadings and process regarding this matter to:

Gia L. Cincone  
TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8th Floor  
San Francisco, CA 94111-3834  
Telephone: (415) 576-0200  
Facsimile: (415) 576-0300

Respectfully submitted,

TOWNSEND *and* TOWNSEND *and* CREW LLP

Dated: December 29, 2004

By: \_\_\_\_\_  
Gia L. Cincone  
*Attorneys for Opposer*  
*Levi Strauss & Co.*

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